

United States District Court		District	Southern District of New York
Name <i>(under which you were convicted)</i> : Ross William Ulbricht		Docket or Case No.: 19 Cv. 75212	
Place of Confinement:		Prisoner No.: 18870-111	
UNITED STATES OF AMERICA		Movant <i>(include name under which convicted)</i> V. Ross William Ulbricht	

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8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: Second Circuit Court of Appeals
- (b) Docket or case number (if you know): _____
- (c) Result: Affirmed
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): United States v. Ulbricht, 858 F.3d 71 (2d Cir. 2017)
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): 17-950
- (2) Result: Petition for writ of certiorari denied
- (3) Date of result (if you know): 06/28/2018
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

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- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Counsel's lack of adversarial testing of the Government's case Violated Ross Ulbricht's Sixth Amendment rights

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Ulbricht's trial counsel conceded Ulbricht's guilt with respect to the most consequential offenses in the indictment. Trial counsel conceded in his Opening Statement that Ulbricht had created and ran the Silk Road website for a period of time. That concession essentially constituted Ulbricht's admission of guilt. Stipulations were entered into where counsel agreed that numerous Silk Road vendors sold and delivered illegal controlled substances to a government agent. These concessions and stipulations relieved the government of its burden of proof on the charges against Ulbricht.

The result was a proceeding where trial counsel failed to subject the prosecution's case to any meaningful adequate adversarial testing in violation of the Sixth Amendment. Also, see memorandum of law and facts of support, and declaration submitted with the same.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

Claims of this nature are more appropriately reserved for collateral attack.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Counsel provided deficient plea advice to Ulbricht. But for counsel's deficient advice there is a reasonable probability that Ulbricht would have pleaded guilty and been sentenced to less jail time.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Government offered Ulbricht a pre-indictment plea deal with required him to plead guilty to and be subject to a minimum punishment of 10 years and up to life imprisonment. Ulbricht's attorneys advised him to reject the deal and proceed to trial. Ulbricht was advised that by going to trial instead of pleading guilty he was risking nothing: even if he went to trial and lost, he was counseled that he would be in no worse position at sentencing because the Guideline range would call for a life sentence either way. Ulbricht rejected the Government's plea offer based on the advice of his attorneys. Ulbricht would have pleaded guilty and accepted the plea offer if his attorneys had properly explained to him the elements that the Government needed to prove. Ulbricht would also have pleaded guilty and accepted the plea offer if he had been advised by counsel that there was a better chance of being sentenced to less than life without the Government's agreement. Alternatively, Ulbricht would have pleaded guilty "open" to the indictment or the superseding indictment without a plea agreement if his attorneys had explained to him that the Government's evidence of guilt was overwhelming and he did not have a legally viable trial defense.

See memorandum of law and facts of support, and declaration submitted with same.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance are more appropriately reserved for collateral review.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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GROUND THREE: Counsel was ineffective in violation of the 6th Amendment by conceding all the essential elements of the offense, pleading Ulbricht guilty with no benefit

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

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(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

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Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Joshua Dratel and Lindsay A. Lewis, 29 Broadway, Suite 1412, New York, New York 10006

(b) At the arraignment and plea:

Joshua Dratel and Lindsay A. Lewis, 29 Broadway, Suite 1412, New York, New York 10006

(c) At the trial:

Joshua Dratel, Lindsay A. Lewis, Joshua Jacob Horowitz 350 Fifth Avenue, Suite 7610 New York, NY 10118

(d) At sentencing:

Joshua Dratel, Lindsay Lewis, Joshua Horowitz

(e) On appeal:

Joshua Dratel, Lindsay Lewis, Josh Horowitz Paul Grant 19501 E. Main Street, #200, Parker CO 8138

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

2255 Motion was filed on June 28, 2019, in the case of United States v. Ross Ulbricht, no. 14-cr-68 (LGS) (S.D. N.Y.). (See ECF No. 355-362). Ulbricht's 2255 motion was filed within 1 year of the denial of his petition for writ certiorari to the United States Supreme Court. Ulbricht's 2255 motion is timely.

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

Grant Ulbricht 28 U.S.C. Section 2255 relief and vacate his judgment and conviction.

or any other relief to which movant may be entitled.

/s Zachary L. Newland

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____ .
(month, date, year)

Executed (signed) on _____ (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.